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OFFICE OF PETITIONS

In re Patent No. 7,633,851
Issued: December 15, 2009
Application No. 10/761,708
Filed: January 21, 2004
Attorney Docket No. 859063.462C1

: DECISION ON REQUEST
: FOR RECONSIDERATION
: OF PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d) filed on February 16, 2010, requesting that the patent term adjustment be corrected from 1197 to 1806 days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand seven hundred thirty days is **GRANTED to the extent indicated herein.**

It is undisputed that the period of examination delay, "A" delay", pursuant to 37 CFR 1.702(a)(1) is 1197 days and the "B" delay period, the over three year period begins on January 21, 2007 and ends on December 15, 2009 and is 1059 days. However, while Applicants agrees that the period of overlap begins on January 21, 2007 and ends on June 30, 2008, Applicant argues that the period of overlap is 450 days. Applicants are advised that as the period of overlap begins on January 21, 2007 and ends on June 30, 2008, the period of overlap is 526 days, and therefore, considering the 526 days of overlap, the "B" delay is 533 days. As such, the patent term adjustment is 1730 days (1197 plus 1059 minus 526 overlap minus 0 applicant delay), not 1806 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by

the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand seven hundred thirty (1730) days**.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial "P".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT
UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,633,851 B2

DATED : December 15, 2009

INVENTOR(S) : Simone Mazzoni

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (1197) days

Delete the phrase "by 1197 days" and insert – by 1730 days--